



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XC451

Marine Mammals; File No. 26778

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Wildstar Films Ltd., Embassy House, Queens Avenue, Bristol, BS8 1SB, UK (Responsible Party: Jennie Hammond), has applied in due form for a permit to conduct commercial or educational photography on humpback whales (*Megaptera novaeangliae*; Hawaii distinct population segment).

DATES: Written, telefaxed, or e-mail comments must be received on or before *[insert date 30 days after date of publication in the **FEDERAL REGISTER**]*.

ADDRESSES: These documents are available upon written request via email to *NMFS.Pr1Comments@noaa.gov*.

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 26778 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov*. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Erin Markin, Ph.D., (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C.

1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film up to 1,520 humpback whales annually in Hawaiian waters for a natural history series in production for National Geographic and Disney+. The applicant seeks to collect footage of humpback male singers, heat runs, and intimate moments between adult females and their calves. Filming would occur topside from two boats, underwater with a polecam or divers, and aerially using an unmanned aircraft system. Up to 150 bottlenose dolphins (*Tursiops truncatus*), 100 melon-headed whales (*Peponocephala electra*), and 100 short-finned pilot whales (*Globicephala macrorhynchus*), 150 spinner dolphins (*Stenella longirostris*), and 150 spotted dolphins (*S. attenuata*) would be unintentionally harassed and filmed annually if they are in the vicinity of whales. The applicant is requesting the permit be valid until December 31, 2024.

It has come to the agency's attention that the 2016 interim final humpback approach rule (50 CFR 216.19; 81 FR 62010, September 8, 2016) does not explicitly exempt permits issued under section 104(c)(6) of the MMPA from its prohibitions. It is not the agency's intent to preclude the issuance of permits or authorizations consistent with the requirements of the MMPA. We interpret the rule to allow issuance of these permits. Consistent with this interpretation, it has been our practice to continue to issue section 104(c)(6) permits that are in compliance with the MMPA's requirements and our review procedures. However, to eliminate any potential ambiguity, we intend to revise the rule to explicitly clarify that photography permits issued under section 104(c)(6) of the MMPA are exempt from the prohibitions on approach.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 5, 2022.

Julia M. Harrison,
Chief, Permits and Conservation Division,
Office of Protected Resources,
National Marine Fisheries Service.

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